



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R09-OAR-2012-0234; FRL-9708-4

Determination of Attainment for the Paul Spur/Douglas PM₁₀

Nonattainment Area, Arizona; Determination Regarding

Applicability of Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a determination that the Paul Spur/Douglas nonattainment area in Arizona is currently attaining the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM₁₀) based on certified, quality-assured ambient air monitoring data for the years 2009 - 2011. Given our determination that the Paul Spur/Douglas nonattainment area is currently attaining the PM₁₀ NAAQS, EPA is also determining that Arizona's obligation to make submissions to meet certain Clean Air Act requirements related to attainment of the NAAQS is not applicable for as long as the Paul Spur/Douglas nonattainment area continues to attain the NAAQS and that the obligation on EPA to promulgate a Federal Implementation Plan to address the State's attainment-related requirements is also suspended for as long as Arizona's

underlying obligation is suspended.

EFFECTIVE DATE: This rule is effective on [Insert date 30 days from the date of publication in the Federal Register].

ADDRESSES: EPA has established docket number EPA-R09-OAR-2012-0234 for this action. The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jerry Wamsley, Air Planning Office, AIR-2, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, telephone number: (415) 947-4111, or e-mail address, wamsley.jerry@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we", "us" or "our" are used, we mean EPA. We are providing the following table of contents for ease of locating information in this proposal.

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- I. EPA's Proposed Action**

On May 25, 2012, EPA proposed to find that the Paul Spur/Douglas nonattainment area (NA)¹ is currently attaining the 24-hour PM₁₀ NAAQS based on certified and quality-assured data from the most recent three-year period, 2009 - 2011, and to suspend certain Clean Air Act (CAA) requirements related to attainment for so long as the area continues to attain the standard. See 77 FR 31268; (May 25, 2012).

To summarize our proposed rule, we described the 24-hour PM₁₀ NAAQS, which is 150 micrograms per cubic meter (µg/m³), and reviewed the designation and classification of the Paul Spur/Douglas NA for that standard. We then discussed how EPA makes attainment determinations for PM₁₀ and indicated that the 24-hour PM₁₀ NAAQS is attained when the expected number of exceedances averaged over a three-year period is less than or

¹ The Paul Spur/Douglas NA covers approximately 220 square miles along the border with Mexico within Cochise County. Cities and towns within this area include Douglas, 2010 population 17,378, (U.S. Census) and Pirtleville, 2010 population 1,744, (U.S. Census). The 2010 population of Agua Prieta, Mexico, just across the border from Douglas, is 78,138 (Instituto Nacional de Estadística y Geografía).

equal to one at each monitoring site within the nonattainment area. See 40 CFR part 50, appendix K.

We described Arizona Department of Environmental Quality's (ADEQ's) two PM₁₀ monitoring sites in the Paul Spur/Douglas area. We noted that ADEQ's annual network plans have met the applicable requirements for such plans, and based on the findings of our technical system audit report, ADEQ's monitoring network meets or exceeds the applicable requirements. Finally, we noted that ADEQ has certified the data it submits to EPA's Air Quality System (AQS) database as quality-assured.

Next, we reviewed the ambient PM₁₀ data collected at the two PM₁₀ monitoring sites in the Paul Spur/Douglas area for the most recent three-year period, 2009 - 2011. We noted that the highest annual 24-hour average PM₁₀ concentrations over the past three years ranged from 46 to 85 µg/m³ at the Paul Spur monitor and from 83 to 138 µg/m³ at the Douglas monitor. As a result, we concluded that the area is attaining the PM₁₀ standard because the expected number of exceedances per year for the Paul Spur/Douglas NA was less than 1.0. For additional information on the PM₁₀ NAAQS, the designation and classification of the Paul Spur/Douglas NA, ADEQ's monitoring network plans and certifications, the monitoring sites in the Paul Spur/Douglas area, and the data we relied on for our clean data finding,

please see 77 FR 31269-31271.

In conjunction with and based on our proposed determination that the Paul Spur/Douglas NA is currently attaining the PM₁₀ NAAQS, EPA proposed to determine that Arizona's obligation to submit revisions to the Arizona State Implementation Plan (SIP) to meet the following CAA requirements is not applicable for so long as the Paul Spur/Douglas NA continues to attain the PM₁₀ standard: the part D, subpart 4 obligation to provide an attainment demonstration pursuant to section 189(a)(1)(B); the reasonably available control measure (RACM) provisions of section 189(a)(1)(C); the reasonable further progress (RFP) provisions of section 189(c); and, the attainment demonstration, RACM, RFP and contingency measure provisions of part D, subpart 1 contained in section 172. We proposed to suspend these SIP requirements based on application of the Clean Data Policy to the Paul Spur/Douglas NA. In doing so, we noted that our application of the Clean Data Policy to the Paul Spur/Douglas NA is consistent with a number of actions we have taken for other PM₁₀ nonattainment areas that we also determined were attaining the NAAQS. For a detailed explanation of our Clean Data Policy and its application to the Paul Spur/Douglas NA, please see 77 FR 31271-31273.

Lastly, we noted that suspension of the State's SIP

obligation would also serve to suspend EPA's obligation to promulgate a Federal Implementation Plan (FIP) to address the same attainment-related requirements. See 77 FR 31273-31274.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received a comment from a private citizen expressing a general skepticism of the ability to regulate PM₁₀ in a desert environment; no general information and no Paul Spur/Douglas NA specific information was provided to support the comment. Furthermore, no information was provided to dispute either the 2009 - 2011 Paul Spur/Douglas ambient PM₁₀ data, or our proposed suspension of attainment-related SIP obligations or the related FIP obligations. Therefore, no response is necessary. We note, however, that many effective measures exist to reduce dust from anthropogenic sources in desert environments, including paving unpaved roads and other unpaved surfaces used by motor vehicles, restricting off-road vehicle use to a designated time of year and/or location where the effects can be mitigated, and stabilizing soil in areas that have been disturbed by human activity.

III. EPA Action

No comments were submitted that change EPA's assessment of the 2009 - 2011 ambient PM₁₀ data collected in the Paul

Spur/Douglas NA and related finding that the area is attaining the NAAQS, or our application of the Clean Data Policy as described in our proposed action. Therefore, EPA is finalizing its determination that the Paul Spur/Douglas NA in Arizona is currently attaining the NAAQS for PM₁₀.

EPA is also taking final action to determine that Arizona's obligation to make SIP submissions to meet the following CAA requirements is not applicable for as long as the Paul Spur/Douglas NA continues to attain the PM₁₀ NAAQS: the part D, subpart 4 obligation to provide an attainment demonstration pursuant to section 189(a)(1)(B); the reasonably available control measure (RACM) provisions of section 189(a)(1)(C); the reasonable further progress (RFP) provisions of section 189(c); and, the attainment demonstration, RACM, RFP and contingency measure provisions of part D, subpart 1 contained in section 172.

Lastly, EPA finds that our obligation to promulgate a FIP addressing the Paul Spur/Douglas NA attainment-related requirements is suspended for as long as the underlying State obligation is suspended.

This final action does not constitute a redesignation to attainment under CAA section 107(d)(3) because Arizona has not submitted a maintenance plan and EPA has not approved such a

plan for the Paul Spur/Douglas NA as meeting the requirements of section 175A of the CAA, nor has EPA determined that Arizona has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 remains moderate nonattainment for the Paul Spur/Douglas NA until such time as EPA determines that Arizona has met the CAA requirements for redesignating the Paul Spur/Douglas NA to attainment.

IV. Statutory and Executive Order Reviews

With this action, we are making a determination regarding attainment of the PM₁₀ NAAQS based on air quality data and, based on this determination, suspending certain Federal requirements. Therefore, this action would not impose additional requirements beyond those imposed by State law or by the CAA. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply

to Indian Tribes and thus will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for

judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 20, 2012

Jared Blumenfeld
Regional Administrator,
EPA Region IX.